BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JASON M. PFANNENSTIEL)
Claimant)
VS.)
) Docket No. 225,409
ALLIED, INC.)
Respondent)
AND)
)
MARYLAND CASUALTY COMPANY)
Insurance Carrier)

ORDER

The respondent and its insurance carrier appealed from a June 12, 1998 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment and designated Dr. Paul S. Stein as the authorized treating physician. Respondent apparently does not dispute for preliminary hearing purposes the compensability of the June 10, 1996 accident, but questions whether claimant's current need for additional medical treatment is related to the original injury. Accordingly, the issue is whether claimant's request for additional medical treatment is for an accidental injury that arose out of and in the course of his employment with respondent.

FINDINGS OF FACT

- (1) Claimant was injured on June 10, 1996 when he slipped on a step while getting into an asphalt truck. Claimant was eventually referred to neurosurgeon Paul S. Stein, M.D., who performed a L5-S1 diskectomy on November 18, 1996. By February 20, 1997, Dr. Stein opined that "overall, [claimant received] a very satisfactory result from surgery."
- (2) Following a functional capacities assessment, Dr. Stein rated and released claimant with a 10 percent functional impairment to the body as a whole. Thereafter, at the request of his attorney, claimant was examined by Dr. Peter V. Bieri on June 13, 1997. His review of the medical records revealed that claimant was diagnosed with "a right side migrated disc

fragment" and right radiculopathy. Before surgery, claimant's right ankle reflex was absent. Claimant informed Dr. Bieri that the surgery was helpful in reducing, but not eliminating, the low back pain. Claimant also reported marked, but incomplete, relief of the right lower extremity numbness. There was no mention of left radiculopathy. Dr. Bieri concluded claimant had reached maximum medical improvement and assigned a 16 percent whole person impairment. No future medical treatment was anticipated.

(3) Approximately January 1998 claimant began experiencing pain into his left leg. He denied any intervening accident or injury that precipitated these symptoms. Since his release from treatment, claimant worked approximately 30 hours per week for Sykes, Inc. of Hays, Kansas, in sedentary work from August through December 1997. Claimant also attended college and worked part-time as a bartender and a clerk.

CONCLUSIONS OF LAW

Claimant attributes his current left-sided symptoms to his accident while working for respondent. He presents no medical evidence attributing those new symptoms to that work-related injury. Conversely, there is no evidence refuting such a causal connection, nor is there any evidence of an intervening accident or injury.

Because of claimant's history of ongoing low back symptoms and, to a lesser extent, right-sided radicular symptoms, the Appeals Board finds that claimant has minimally carried his burden of proving his entitlement to additional medical benefits. A recent medical opinion connecting the left-sided radicular symptoms to the accident or surgery would have been preferred. Hopefully, Dr. Stein will address this question of causation as a part of his follow-up examination. Based upon the record compiled to date, the ALJ's award of preliminary benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the June 12, 1998, Order by Administrative Law Judge Bruce E. Moore should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this day of September 1998.

BOARD MEMBER

c: Don C. Staab, Hays, KS
Jeff S. Bloskey, Overland Park, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director